

Ramon Rossi Lopez - rlopez@lopezmchugh.com
(California Bar Number 86361; admitted *pro hac vice*)
Lopez McHugh LLP
100 Bayview Circle, Suite 5600
Newport Beach, California 92660
949-812-5771

Mark Stephen O'Connor (011029) – mark.oconnor@gknet.com
Gallagher & Kennedy, P.A.
2575 East Camelback Road
Phoenix, Arizona 85016-9225
602-530-8000

Co-Lead/Liaison Counsel for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

In Re Bard IVC Filters Products
Liability Litigation

No. MD-15-02641-PHX-DGC

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION AND
MEMORANDUM TO SEAL RELATING
TO PLAINTIFFS' RESPONSES TO
DEFENDANTS MOTIONS TO EXCLUDE
PLAINTIFFS' EXPERTS**

I. INTRODUCTION

Plaintiffs hereby oppose C.R. Bard, Inc. and Bard Peripheral Vascular, Inc. (Collectively referred to as "Bard") Motion and Memorandum to Seal Relating to Plaintiffs' Responses to Defendants' Motions to Exclude Plaintiffs' Experts ("Responses and Exhibits") and request this Court refrain from sealing the documents at issue as Defendants offer no sufficient justification to seal documents in this matter.

Bard has asked this Court for the "exceptional" remedy of sealing documents from the public in derogation of the common law and First Amendment rights of access to judicial documents.

1 Although Bard's brief does not address this point, Bard has put the very documents
2 it seeks to seal at issue. Bard filed *Daubert* motions in every bellwether action against most
3 of Plaintiffs' experts, and Plaintiffs' rely on these experts to support their Responses to
4 Bard's Motions for Summary Judgments. The documents that Bard urges the Court to seal
5 are not only relevant, but necessary for Plaintiffs to fully and properly respond to Bard's
6 motions seeking to defeat Plaintiffs' causes of action and exclude Plaintiffs' experts.

7 The Motions before the Court and the documents at issue in Bard's Motion to Seal
8 are of significant importance to the public in general, and particularly to these Plaintiffs and
9 the thousands of other individuals in this litigation who allege harm by Bard's defective
10 products. This is a critical health safety litigation with significant stakes and a national
11 scope, and these are the first cases before the MDL court to reach the *Daubert* motion stage.
12 Bard has represented to this Court – and the Plaintiffs, the public, and everyone with an
13 interest in this litigation - that several of Plaintiffs' experts have no factual support for their
14 testimony. This is not true. In fact, Plaintiffs' experts have reviewed and relied on many
15 Bard internal documents which Bard did not provide to its own experts.

16 Bard requests to redact a total of thirty (34) Responses and Exhibits listed in Ex. A
17 to Defendants' Motion and Incorporated. Memorandum To Seal (discussed in detail within
18 this brief); Bard's Motion should be denied for the following reasons: (1) Defendants failed
19 to meet the burden to show "compelling reasons" based on specific facts that demonstrate
20 real and actual harm or hardship that will result from disclosure for the Response and
21 Exhibits related to Robert McMeeking, PhD. and Derek Muehrcke, M.D.; (2) Defendants
22 failed to show that "good cause" to exist to seal their documents related to Plaintiffs'
23 Responses and Exhibits for Rebecca Betensky, Ph.D, David Garcia, M.D., Michael Streiff,
24 M.D., and Suzanne Parisian, M.D.; (2) the documents are neither trade secrets nor
25 confidential information; speculative commercial harm is insufficient to seal information
26 and the public is entitled to a right to access these Responses and Exhibits.

1 **II. ARGUMENT**

2 **A. THE PROTECTIVE ORDER IS INSUFFICIENT ON ITS OWN TO**
 3 **ESTABLISH THAT THESE DOCUMENTS SHOULD BE FILED**
 4 **UNDER SEAL**

5 On November 9, 2015, the Court granted a stipulated blanket protective order
 6 pursuant to Rule 26 of the Federal Rules of Civil Procedure. (Dkt. No. 268). The Order
 7 provided a broad definition of what information could meet the “good cause” standard under
 8 Rule 26 and allowed Bard to self-designate discovery materials as protected:

9 The parties, through their respective counsel, stipulate to the entry of a
 10 protective order to govern the dissemination of documents, materials, and
 11 other information, including the substance and content thereof, designated by
 12 any party as confidential and produced by any party in support of motions,
 13 in response to written discovery, or during any formal or informal discovery
 14 in this litigation subject to the terms as set forth below.

15 Courts frequently enter umbrella or blanket protective orders to govern voluminous
 16 productions to expedite discovery efforts rather than requiring a showing of good cause on
 17 a document-by-document basis for all responsive documents produced at the outset of
 18 litigation. *United States ex rel. Brown v. Celgene Corp.*, 2016 WL 6542729, at *4 (C.D.
 19 Cal. Mar. 14, 2016). Therefore, the protective order in this case did not modify Bard’s
 20 burden to provide particularized showing of good cause with respect to any individual
 21 documents or address Bard’s burden regarding establishing compelling reasons when
 22 seeking to seal dispositive motions, or *Daubert* motions submitted “in connection with”
 23 pending motions for summary judgment. *See, San Jose Mercury News, Inc. v. U.S. Dist.*
 24 *Court—Northern District (San Jose)*, 187 F.3d 1096 (9th Cir. 1999); *In re Midland Nat. Life*
Ins. Co. Annuity Sales Practices Litig., 686 F.3d 1115, 1120–21 (9th Cir. 2012).

25 First, Bard seeks an overly broad application of the protective order by requesting
 26 protection for documents that were never subject to the discovery process, such as expert
 27 reports and schedules. Next, Bard presumes the Order only affords protection for them and
 28 overlooks that the language of the Order also provides relief to Plaintiffs; Plaintiffs rely on

1 paragraph 22, “Challenges to Designation of Confidential Information,” to support their
 2 opposition and to challenge the sealing of their Responses and Exhibits based on Bard’s
 3 failure to show “good cause” along with the First Amendment right to access.¹

4 “Though a stipulated protective order may provide documents designated as
 5 confidential are presumptively protected, a party’s calling a document confidential pursuant
 6 to a protective order does not make it so when it comes to filing the document with the
 7 court.” *Tillman v. C.R. Bard, Inc.*, 297 F.R.D. 660, 665 (M.D. Fla. 2014)(quoting *Joao Bock*
 8 *Transaction Sys., LLC v. Fidelity Nat. Info. Servs. Inc.*, Case No. 3:13-cv-223-J-32JRK,
 9 2014 WL 279656, at *1 (M.D. Fla. Jan. 24, 2014)). As such, Plaintiffs challenge the
 10 designation of the Documents at Issue, and assert that protective orders are insufficient on
 11 their own to establish that documents should be filed under seal.

12 **B. BARD CANNOT MEET THE HEAVY “COMPELLING REASONS”**
 13 **BURDEN REQUIRED TO JUSTIFY SEALING DOCUMENTS**
 14 **SUPPORTING THEIR DAUBERT RESPONSES AND EXHIBITS**
 15 **WHICH FORM THE BASIS OF PLAINTIFFS’ RESPONSES TO**
 16 **DEFENDANTS’ MOTIONS FOR SUMMARY JUDGEMENT.**

17 **1. The “Compelling Reasons” Standard Applies To *Daubert* Motions**
 18 **Submitted “In Connection With” Pending Motions For Summary**
 19 **Judgment.**

20 The “compelling reasons” standard applies not only to motions for summary
 21 judgment, but also to *Daubert* motions submitted “in connection with” pending motions for
 22 summary judgment because “exclusion of expert testimony could cause a crippling blow to
 23 the sponsoring party’s ability to prove its case.” *See, Open Text S.A. v. Box, Inc.*, 13-CV-
 24 04910-JD, 2014 WL 7368594, at *2 (N.D. Cal. Dec. 26, 2014)(citing *In re Midland Nat.*
 25 *Life Ins. Co. Annuity Sales Practices Litig.*, 686 F.3d 1115, 1120–21 (9th Cir. 2012).

26 ¹ There is a default common law right of access to records in civil proceedings. *Nixon v.*
 27 *Warner Communications, Inc.*, 435 U.S. 589, 597, 55 L. Ed. 2d 570, 98 S. Ct. 1306
 28 (1978). As stated above, the dispositive motion standard was not addressed in the Order.
 (Dkt. No. 268).

1 When *Daubert* motions seeking to exclude the testimony of experts are “aimed
 2 squarely at the other side’s damage methodology” and “in connection with” pending
 3 motions for summary judgment, the Ninth Circuit applies the “compelling reasons” standard
 4 and requires the moving party to comply with this standard instead of the “good cause”
 5 standard. *Id.* A *Daubert* motion does not, on its own, conclusively invoke the higher burden
 6 of proof. *Id.* A *Daubert* motion must be connected to a pending summary judgment motion,
 7 effectively “dispositive of a motion for summary judgment.” *Open Text S.A. v. Box, Inc.*, at
 8 *2. (quoting *Lust ex rel. Lust v. Merrell Dow Pharm., Inc.*, 89 F.3d 594, 597 (9th Cir.1996)).²

9 Here, Plaintiffs rely on experts Robert McMeeking, PhD. and Derek Muehrcke, M.D.
 10 to establish genuine issues of material facts “in connection with” the following Responses
 11 to Bard’s Motions for Summary Judgment:

- 12 – Plaintiffs’ Omnibus Separate Statement of Facts In Support Of Their
 13 Response to Defendants’ Motion For Summary Judgments In The Bellwether
 14 Cases, (Dkt. 7950);
- 15 – Plaintiff’s Controverting Statement of Facts In Opposition to Bard’s Motion
 16 For Partial Summary Judgment as to Plaintiffs Lisa and Mark Hyde’s Claims,
 17 (Dkt. 7953);
- 18 – Plaintiffs’ Controverting Statement of Facts to Defendants’ Separate
 19 Statement of Facts in Support of Motion for Summary Judgment as to
 20 Plaintiffs Doris And Alfred Jones’s Claims, (Dkt. 7944);
- 21 – Plaintiff Carol Kruse’s Controverting Statement of Facts in Support of Her
 22 Memorandum in Opposition to Defendants’ Motion and Memorandum in
 23 Support of Motion for Summary Judgment as to Plaintiff Carol Kruse’s
 24 Claims, (Dkt.7948);

26 ² Non-dispositive motions “are often ‘unrelated, or only tangentially related, to the
 27 underlying cause of action,” and, as a result, the public’s interest in accessing dispositive
 28 materials does “not apply with equal force” to non-dispositive materials. *Kamakana v.*
City & County of Honolulu, 447 F.3d 1172, 1179 (9th Cir. 2006).

- 1 – Plaintiff’s Controverting Statement of Facts in Opposition to Bard’s Motion
- 2 for Summary Judgment as to Plaintiff Debra Mulkey’s Claims, (Dkt. 7946);
- 3 – Plaintiff’s Controverting Statement of Facts in Opposition to Bard’s Motion
- 4 for Summary Judgment as to Plaintiff Sheri-Una Booker’s Claims, (Dkt.
- 5 8165).

6 As such, Defendants’ *Daubert* Motions to Exclude Plaintiffs’ Experts are “aimed

7 squarely at the other side’s damage methodology” and Plaintiffs’ Response and Exhibits

8 in regards to Robert McMeeking, PhD. and Derek Muehrcke, M.D. are “in connection with”

9 pending motions for summary judgments as listed above; here, Bard is required to show

10 “compelling reasons” to seal based on specific facts that actual resulting harm outweighs

11 the strong presumption of access to court records.

12 **2. Standard for Sealing *Daubert* Motions Submitted “In Connection**

13 **With” Pending Motions For Summary Judgment.**

14 Courts have historically recognized a “general right to inspect and copy public

15 records and documents, including judicial records and documents.” *Nixon v. Warner*

16 *Communications, Inc.*, 435 U.S. 589, 597 (1978). To overcome the “strong presumption in

17 favor of access” in relation to a dispositive motion, the party seeking to seal bears the burden

18 of overcoming this presumption by meeting the “compelling reasons” standard. *Kamakana*

19 *v. City & County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). “That is, the party must

20 articulate compelling reasons supported by specific factual findings that outweigh the

21 general history of access and the public policies favoring disclosure, such as the public

22 interest in understanding the judicial process.” *Id.* at 1178-79 (internal citations and

23 quotations omitted). “In turn the Court must conscientiously balance the competing interest

24 of the public and the party who seeks to keep certain judicial records secret.” *Id.* at 1179.

25 (internal citations and quotations omitted). Conclusory statements concerning hypothetical

26 harm that may result from public disclosure of such documents fail to carry this burden *Id.*

27 at 1182. Whenever a document has been filed in connection with a dispositive motion, even

28 if the document had been previously sealed upon a showing of good cause, the “compelling

1 reasons” standard applies. *Id.* at 1179-80. *See also, In re Pradaxa (Diabigatran Etexilate)*
2 *Products Liability Litigation*, 2014 WL 321656, at *4 (S.D. Ill. Jan. 29, 2014) (ordering a
3 German drug maker to de-designate 85 documents previously marked as confidential and
4 ordering the court clerk to unseal the documents).

5 The Ninth Circuit disfavors sealing broad categories of documents; particularly
6 where specific details regarding the need for such protection are absent. *Kamakana* at 1184.
7 The moving party must demonstrate a genuine need and provide a detailed explanation of
8 that need and specific facts supporting the harm that may result. *Id.* at 1182-84.

9 The “compelling reasons” standard is a strict one, and requires that the party seeking
10 to seal material show specific, individualized reasons for sealing the material, “without
11 relying on hypothesis or conjecture,” such as “whether disclosure of the material could
12 result in improper use of the material for scandalous or libelous purposes or infringement
13 upon trade secrets.” *See Pintos v. Pacific Creditors Ass’n*, 605 F.3d 665, 679 & n.6 (9th Cir.
14 2009). “Simply mentioning a general category of privilege, without any further elaboration
15 or any specific linkage with the documents, does not satisfy the burden.” *Kamakana*, 447
16 F.3d at 1179.

17 Then the district court must weigh the “relevant factors” and base its decision “on a
18 compelling reason,” and “articulate the factual basis for its ruling, without relying on
19 hypothesis or conjecture.” *Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 679 (9th Cir.
20 2010)(citing *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir.1995)). “Relevant factors”
21 include the “public interest in understanding the judicial process and whether disclosure of
22 the material could result in improper use of the material for scandalous or libelous purposes
23 or infringement upon trade secrets.” *Hagestad*, 49 F.3d at 1434 (quoting *EEOC v. Erection*
24 *Co., Inc.*, 900 F.2d 168, 170 (9th Cir.1990) (*See also, Kamakana* 447 F.3d at 1179,
25 “compelling reasons sufficient to outweigh the public’s interest in disclosure and justify
26 sealing court records exist when such court files have become a vehicle for “improper
27 purposes, such as the use of records to gratify private spite, promote public scandal, circulate
28 libelous statements, or release trade secrets”). However, the mere fact that unsealing such

1 records may lead to embarrassment, incrimination, or exposure to litigation is not a
2 compelling reason to seal court records. *Id.*

3 As will be discussed below, Bard has not provided “compelling reasons” to seal any
4 of the documents at-issue related to Robert McMeeking, PhD. and Derek Muehrcke, M.D
5 nor has Bard shown the Response and Exhibits to contain trade secrets or confidential
6 information.

7 **C. BARD HAS FAILED TO MEET ITS BURDEN TO SHOW**
8 **COMPELLING REASONS BASED ON SPECIFIC FACTS THAT**
9 **ACTUAL RESULTING HARM OUTWEIGHS THE STRONG**
10 **PRESUMPTION OF ACCESS TO COURT RECORDS.**

11 Bard must establish “compelling reasons” to support redacting documents listed in
12 Exhibit A related to Robert McMeeking, PhD. and Derek Muehrcke, M.D. Bard generally
13 claims that the redacted information in Bard’s documents contain “confidential information
14 and correspondence concerning Bard’s processes, procedures, methods, and corrective
15 active strategies, policies and procedures.” (Dkt. 8123 at 3). Other than such vague
16 generalities, Bard offers no specific grounds or reasons why disclosure of specific
17 documents would put it at any potential competitive disadvantage or provide Bard’s
18 competitors with an economic advantage. Nor can such a showing be made. Notably Bard’s
19 motion is conspicuously devoid of any supporting affidavits, declarations or other evidence.

20 A review of the exhibits in support of Plaintiffs Responses confirms the nonexistence
21 of “trade secret” information or related categories which Bard incorrectly claims warrant
22 sealing. (Dkt. 8123-1, Exhibit A). Bard does not provide specific, individualized reasons
23 for sealing nor to justify that its redactions are necessary to protect trade secrets; *See Pintos*
24 *v. Pacific Creditors Ass’n*, 605 F.3d 665, 679 & n.6 (9th Cir. 2009). It is clear from a tertiary
25 review of Exhibit A to Bard’s Motion that it is lacking compliance with the Ninth Circuit’s
26 elevated “compelling reasons” standard based on *Daubert* motions submitted “in
27 connection with” pending motions for summary judgment.

28 Bard’s failure to provide specific factual support for its claims of trade secret is
strikingly similar to the factual deficiency in *Biocore, Inc. v. Khosrowshahi*, 96 F. Supp. 2d

1 1221, 1231-32 (D. Kan. 2000) (“*Biocore*”). In *Biocore*, a company alleged that its business
 2 procedures for conducting clinical trial studies and for obtaining FDA clearance under FDA
 3 regulations were trade secrets. As in the present matter, *Biocore*, the plaintiff, failed to
 4 produce evidence describing the procedures, and failed to explain how its procedures
 5 differed from others in the field or from the general FDA requirements. The court ruled that
 6 Biocore had failed to establish the documents were trade secret because “[p]laintiffs failed
 7 to meet their burden of proving that their method of conducting efficacy studies is different
 8 from methods that are matters of general knowledge in the trade.” *Id.* at 1231. The court
 9 explained its decisions as follows:

10 While both of these items are marked confidential, they contain nothing but
 11 basic information. Plaintiffs do not show that the validation protocol and
 12 validation procedures are not generally known. They provide no evidence
 13 regarding protocols and procedures which other companies use. Neither
 14 document describes any procedure that appears to be out of the ordinary; the
 15 documents list obvious procedures which every company in the field would
 16 also follow with slight but obvious variations for specific equipment and
 17 products.

18 *Id.* at 1232 (internal citations omitted). As in *Biocare*, Bard has failed to provide anything
 19 beyond general and unsupported claims.

18 **D. BARD FAILS TO ESTABLISH GOOD CAUSE TO SEAL**

19 Bard relies on the “good cause” standard to justify the sealing of the Plaintiffs’
 20 Responses and Exhibits related to Rebecca Betensky, Ph.D, David Garcia, M.D.,
 21 Michael Streiff, M.D., and Suzanne Parisian, M.D. A party asserting “good cause” bears
 22 the burden, for each particular document it seeks to protect, of showing that specific
 23 prejudice or harm will result if no protection is granted. *Foltz v. State Farm Mut. Auto.*
 24 *Ins. Co.*, 331 F.3d 1122, 1130–31 (9th Cir. 2003) (citing *San Jose Mercury News*, 187
 25 F.3d at 1102); *See also, Beckman Indus., Inc. v. International Ins. Co.*, 966 F.2d 470,
 26 476 (9th Cir.1992) (holding that “broad allegations of harm, unsubstantiated by specific
 27 examples or articulated reasoning, do not satisfy the Rule 26(c) test.”) (*quoting*
 28 *Cipollone v. Liggett Group, Inc.*, 785 F.2d 1108, 1121 (3d Cir.1986) (internal quotation

marks omitted)); *Deford v. Schmid Prods. Co.*, 120 F.R.D. 648, 653 (D.Md.1987) (requiring party requesting a protective order to provide “specific demonstrations of fact, supported where possible by affidavits and concrete examples, rather than broad, conclusory allegations of potential harm”). The burden is on the party requesting a protection to demonstrate that (1) the material in question is a trade secret or other confidential information within the scope of Rule 26(c), and (2) disclosure would cause an identifiable, significant harm. *Deford*, 120 F.R.D. at 653. Even if a court finds “good cause” under Rule 26(c) to seal a document, it must still determine whether the common law right of access compels production. *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006)

Here, Bard fails to establish “good causes” based in fact that outweigh the general history of access and the public policies favoring disclosure. In one sentence, Bard summarizes its “good cause” to seal all thirty four (34) documents subject to its Motion: “competitor companies would gain an unfair economic advantage if they gained access to Bard’s commercial information, therefore causing Bard real and tangible harm in the highly competitor medical device industry.” (Dkt. 8123 at 4). Not once does Bard articulate or identify an example of the specific harm that could be caused by release of the documents at issue nor does Bard demonstrate a trade secret or information that is at risk. It is clear; Bard fails to satisfy the Rule 26(c) test and the 9th Circuit’s requirement to establish a “good cause” basis to seal documents attached to Plaintiff’s Response and Exhibits to Bard’s *Daubert* Motions.

The one case Bard cites to suggest that a “good cause” standard for non-dispositive motions is relevant, *Chi. Tribune Co. v. Bridgestone/Firestone, Inc.* 263 F.3d 1304, 1312-13 (11th Cir. 2001), relates only to “material filed with discovery motions,” which are not at issue in the Motion before the Court. Further, and more importantly, Bard fails to address the differences between the “compelling reasons” standard and the “good cause” standard. A “good cause” showing will not, without

1 more, satisfy a “compelling reasons” test. *See, Foltz*, 331 F.3d at 1135–36; *Phillips ex*
 2 *rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1212 (9th Cir.2002).

3 Bard seeks to seal documents after the discovery period has closed and just prior
 4 to trial. Plaintiffs’ position is that Bard has not shown “good cause” to seal these
 5 particular exhibits, precisely they have not argued with specificity the substance and
 6 portions of the documents they seek to seal. Moreover, no arguments have been
 7 presented as to the nature and substance of these documents that justify sealing nor has
 8 a description of the specific injury, competitive or otherwise, that Bard is likely to
 9 experience if these documents are not sealed.

10 **E. BARD’S DOCUMENTS CANNOT BE CHARACTERIZED AS TRADE**
 11 **SECRETS.**

12 Bard’s documents at-issue cannot be objectively characterized as trade secrets or
 13 confidential information. The information contained in these documents has no inherent or
 14 intrinsic actual or potential value. The majority of the information is stale, and several of
 15 the documents involve products which have not been sold since 2009. Secret or confidential
 16 information becomes “stale” over time and thus rule that a previous confidential designation
 17 no longer applies. *See, Salomon Smith Barney, Inc. v. HBO & Co.*, 2001 WL 225040, at *2
 18 (S.D.N.Y. Mar. 7, 2001) (stating that although there may have been reasons to mark
 19 documents as confidential at the time they were generated, there was insufficient cause
 20 shown “for so treating them today”).

21 Bard argues generally that the medical device industry is competitive. Bard appears
 22 to supplant “confidentiality” with “trade secret” because “[b]usiness information alleged to
 23 be confidential ‘is not entitled to the same level of protection from disclosure as trade secret
 24 information.’” *Republic of Philippines v. Westinghouse Elec. Corp.*, 949 F.2d 653, 663 (3d
 25 Cir. 1991), quoting *Littlejohn v. BIC Corp.*, 851 F.2d 673, 685 (3d Cir. 1988). Trade secrets
 26 have been defined in the Ninth Circuit as “any formula, pattern, device or compilation of
 27 information which is used in one’s business, and which gives him an opportunity to obtain
 28 an advantage over competitors who do not know or use it.” *In re Elec. Arts, Inc.*, 298 F.

1 App'x 568, 569–70 (9th Cir. 2008) (applying the Restatement's definition of trade secret in
2 the record-sealing context).

3 The documents Bard seeks to redact do not include formulas, patterns, or
4 compilations of information which would provide an opportunity or advantage to Bard's
5 competitors. There is nothing in these documents that would provide any value to any
6 competitor or to Bard in keeping them a secret from its competitors. Bard has not elucidated
7 a compelling reason to redact this information and speculative commercial harm is
8 insufficient to overcome the "strong presumption in favor of public access."

9 **III. CONCLUSION**

10 Bard fails to establish both "compelling reasons" and "good cause" based in fact that
11 outweighs the general history of access and the public policies favoring disclosure; as such
12 Bard failed to establish specific facts showing that these documents are "trade secrets" and
13 that it would suffer a serious and specific harm from disclosure of this information. Bard's
14 motion does not articulate a "narrowly tailored" remedy as required when contemplating
15 suppression of the public's First Amendment right of access to these documents.

16 RESPECTFULLY SUBMITTED this 24th day of October, 2017.

17 GALLAGHER & KENNEDY, P.A.

18 By: /s/Mark S. O'Connor

19 Mark S. O'Connor
20 2575 East Camelback Road
Phoenix, Arizona 85016-9225

21 LOPEZ McHUGH LLP

22 Ramon Rossi Lopez (CA Bar No. 86361)
23 (admitted *pro hac vice*)
24 100 Bayview Circle, Suite 5600
Newport Beach, California 92660

25 HEAVISIDE REED ZAIC

26 Julia Reed Zaic, Esq. (CA Bar No. 224671)
27 (admitted *pro hac vice*)
312 Broadway, Suite 203
Laguna Beach, California 92660

28 *Counsel for Plaintiffs*

1 I hereby certify that on this 24th day of October, 2017, I electronically transmitted
2 the attached document to the Clerk's Office using the CM/ECF System for filing and
3 transmittal of a Notice of Electronic Filing.

4
5 /s/ Gay Mennuti
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28